

*In the Matter of Deputy County Emergency Management Coordinator
Warren County*
CSC Docket No. 2011-4132
(Civil Service Commission, decided June 1, 2011)

Warren County, represented by J. Andrew Kinsey, Esq., appeals the attached determination of the Division of State and Local Operations (SLO) that the title of Deputy County Emergency Management Coordinator is properly allocated to the career service.

By way of background, on February 9, 2011, the Warren County Board of Chosen Freeholders passed a resolution appointing William Hunt as the Deputy County Emergency Management Coordinator/Deputy Public Safety Director, effective January 27, 2011. The resolution specified that this was an unclassified appointment. Warren County then attempted to enter Hunt's unclassified appointment to the title of Deputy County Emergency Management Coordinator into the County and Municipal Personnel System (CAMPS). At that time, SLO advised that it was unable to approve an unclassified appointment to the Deputy County Emergency Management Coordinator title, since it was a career service title.¹

Warren County challenges SLO's refusal to record Hunt's unclassified appointment. It recounts that, effective January 1, 2011, Frank Wheatley was appointed to the unclassified titles of Public Safety Director and County Emergency Management Coordinator. Hunt was then appointed to serve as Deputy County Emergency Management Coordinator and Deputy Public Safety Director. The appointing authority maintains that *N.J.S.A. 11A:3-5(u)* provides that the political subdivision unclassified service shall include "[a]ny title as provided by statute or as the Commission may determine in accordance with criteria established by rule." Warren County argues that *N.J.S.A. App. A:9-42.1b* provides that:

The deputy emergency management coordinator position shall be filled by the governing body in each county by: a. the appointment of a qualified individual; b. the selection of a qualified volunteer; or, if appropriate, c. the selection of an individual pursuant to the rules and regulations of the Civil Service Commission of the State of New Jersey.

Warren County contends that, since a statute establishes the position of Deputy County Emergency Management Coordinator, "the Civil Service Commission has no authority to establish this position as a [career service] position under the civil

¹ It is noted that Warren County has not attempted to record Hunt's appointment to the title of Deputy Public Safety Director with this agency. In any event, this agency's records reflect that the title of Deputy Director of Public Safety is, likewise, a career service title.

service regulations.” It maintains that it has the authority to determine whether it is “appropriate” to select the individual pursuant to Civil Service law and rules, and, in this case, it determined that it was not. Finally, Warren County notes that there are several unclassified titles recognized by this agency based on “statutes which do not designate a position to be unclassified.” As examples, Warren County cites *N.J.S.A. 40A:9-30* and *N.J.S.A. 27:14-24*. It is noted that *N.J.S.A. 40A:9-30* provides for the appointment of Purchasing Agents for a term of three years by the County Board of Chosen Freeholders, and *N.J.S.A. 27:14-24* provides for the appointments of County Engineers, Supervisors of Roads, Assistant Supervisors of Roads, and Superintendents and Assistant Superintendents of Bridges for specific terms of office.

CONCLUSION

In matters involving the question as to whether a particular title should be allocated to either the career or unclassified service, the starting point is the *New Jersey Constitution*, Article VII, sec. 1, par. 2, providing that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, *as far as practicable, by examination*, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law.

It should be noted that, in matters concerning allocation to the unclassified service, a strict interpretation of Civil Service law is mandated. *See In the Matter of Karl A. Shelley and Sharon K. Zimmerman*, Docket No. A-1744-94T2 (App. Div. March 20, 1996).

In local service, *N.J.S.A. 11A:3-5* provides that the unclassified service shall be limited to those titles it specifically designates and all other titles created by other statutes or as the Civil Service Commission (Commission) may determine in accordance with criteria established by rule. *N.J.A.C. 4A:3-1.1(a)* provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service pursuant to *N.J.A.C. 4A:3-1.3*. *N.J.A.C. 4A:3-1.3(a)* provides that a job title shall be allocated to the unclassified service when:

- 1) In State service, the title is so designated under *N.J.S.A. 11A:3-4*;

2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;

3) The title is designated unclassified by another specific statute;

4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority;
or

5) The [Commission] determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981). This principle of ascertaining "merit and fitness" for promotions and appointments through an open-competitive examination process is at the very heart of our merit system.

In the instant matter, as is clear from the above, a title is deemed to be allocated to the career service, unless it is specifically allocated to the unclassified service by *N.J.S.A.* 11A:3-5, by another statute, or by the Commission in accordance with the criteria set forth in *N.J.A.C.* 4A:3-1.3(a)5. Here, *N.J.S.A.* 11A:3-5 does not specifically allocate the title of Deputy County Emergency Management Coordinator to the unclassified service. Rather, it allocates specific titles and classes of titles, such as elected officials, attorneys, and county department heads. Similarly, there is no dispute that the Commission has not approved the allocation of the subject title to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3(a)5, and Warren County makes no arguments in the instant matter that the title should be deemed unclassified pursuant to *N.J.A.C.* 4A:3-1.3(a)5.

Warren County maintains that *N.J.S.A.* App. A:9-42.1b provides the statutory authority to allocate this title to the unclassified service. However, this statute does not designate the title of Deputy County Emergency Management Coordinator as unclassified, nor does it provide that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority. It provides that:

The deputy emergency management coordinator position shall be filled by the governing body in each county by: a. the appointment of a

qualified individual; b. the selection of a qualified volunteer; or, if appropriate, c. the selection of an individual pursuant to the rules and regulations of the Civil Service Commission of the State of New Jersey.

Contrary to Warren County's contention, there is nothing in this statute which vests it with the authority to determine whether or not it is appropriate to select a Deputy County Emergency Management Coordinator pursuant to the rules and regulations of the Commission. Rather, a plain reading of the statute reveals that it would be "appropriate" to appoint an individual to the title of Deputy County Emergency Management Coordinator pursuant to the rules and regulations of the Commission when the County making the appointment is subject to the rules and regulations of the Commission, as is the case here.

Further, it is noted that the examples of statutes governing unclassified titles, which do not specifically designate titles as unclassified, provide that appointees to the titles serve for fixed terms. *See N.J.S.A. 40A:9-30 and N.J.S.A. 27:14-24.* Thus, pursuant to *N.J.A.C. 4A:3-1.3(a)4*, these titles are appropriately considered unclassified, notwithstanding that the statutes do not expressly indicate that the titles are unclassified.

Accordingly, no basis has been presented to disturb the determination of SLO that Hunt must be provisionally appointed to the career service title of Deputy County Emergency Management Coordinator, pending promotional examination procedures.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.